

Appellant-Defendant James Rose appeals following his conviction for Class C felony Battery.¹ Rose contends that the evidence was insufficient to support the finding that he was a habitual offender. Alternatively, Rose contends that the maximum habitual offender sentence enhancement was inappropriate in light of his character and the nature of his offense. We affirm.

FACTS AND PROCEDURAL HISTORY

Trenten Walls and Crystal Pugh² were involved in a nine-year domestic relationship, during which time they parented two children. Their relationship ended in September of 2005. Pugh and the couple's children moved into her parents' home approximately one-and-one-half blocks from Walls's home. The couple's split eventually became contentious and resulted in numerous arguments and court hearings concerning the division of property.

On November 20, 2005, the trial court ordered Walls to turn certain property over to Pugh. When Pugh arrived at Walls's home, the property exchange did not occur as planned, and Pugh left without removing any property. Later that evening, Walls called Pugh's parents' home to schedule visitation with the children. Rose, Pugh's younger brother, answered the phone and refused to allow Walls to speak to the children. An argument ensued. At the conclusion of the phone conversation, Rose informed Walls that "I'm gonna come down to your house and kick your a**." Tr. p. 68.

¹ Ind. Code § 35-42-2-1(a)(3) (2005).

² At the time of the incident in question, Crystal Pugh's last name was Wortinger. It appears that between the dates of the incident and trial, Crystal Pugh married.

Moments later Rose arrived at Walls's home. Walls went out and stood on the end of his driveway and told Rose and Rose's approaching family and friends that they needed to leave because his girlfriend, Bobbi Wine, was calling the police.³ Rose did not leave the property. He struck Walls twice in the head with a metal pipe before Walls fell to the ground. Once Walls was on the ground, Rose, Pugh and the other members of the group that had assembled continued to kick Walls. When Bobbi Wine approached the group to tell them to stop and that the police were on their way, Rose and his mother, Carolyn Rose, told Wine that if she did not go back inside, "she was next." Tr. p. 100. The group dissipated when sirens approached. The members of the group walked away laughing, leaving Walls lying in the road bleeding and unconscious.

Walls was treated at Wabash County Hospital for injuries to his face, a laceration around his right eye, an injury to his shoulder, and a laceration on the back of his head which required three staples. As a result of the incident, Walls suffered from post-traumatic stress disorder, paranoia, and anxiety. Additionally, he continues to suffer from seizures and a small amount of permanent brain damage. Walls had not suffered from any of these conditions prior to the incident. As a result of the seizures, Walls is not able to work and cannot be left alone, either by himself or with his children.

On November 29, 2005, Rose was charged with Class C felony battery. On March 2, 2006, the State added a habitual offender enhancement. Rose was tried before a jury in a bifurcated trial on October 2 and 3, 2007. In order to prove that Rose was a habitual

³ Walls and Bobbi Wine have subsequently married.

offender, the State introduced evidence at trial of Rose's March 9, 2005 conviction for Class D felony auto theft and his December 14, 2000 convictions for Class D felony sexual battery and Class D felony theft. The jury found Rose guilty of battery and that he was a habitual offender. On November 1, 2007, the trial court sentenced Rose to eight years of incarceration, with four years suspended to formal probation, for the battery conviction and twelve years for the habitual offender enhancement. This appeal follows.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Rose contends that the evidence was insufficient to support his habitual offender finding. Specifically, he claims that the evidence was insufficient because the State could have easily procured an identity witness to provide conclusive proof that he was, in fact, the individual convicted of the felonies.

In reviewing a claim of insufficient evidence, we will affirm the conviction unless, considering only the evidence and reasonable inferences favorable to the judgment, and neither reweighing the evidence nor judging the credibility of the witnesses, we conclude that no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.

Tyson v. State, 766 N.E.2d 715, 717-18 (Ind. 2002) (citing *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000)).

The Indiana Supreme Court has held the following with regard to the use of documents to establish the existence of prior convictions:

Certified copies of judgments or commitments containing a defendant's name or a similar name may be introduced to prove the commission of prior felonies. *Schlomer v. State*, 580 N.E.2d 950, 958 (Ind. 1991) (citing *Andrews v. State*, 536 N.E.2d 507 (Ind. 1989)). While there must be supporting evidence to identify the defendant as the person named in the

documents, the evidence may be circumstantial. *Id.*; *see also Coker v. State*, 455 N.E.2d 319, 322 (Ind. 1983). If the evidence yields logical and reasonable inferences from which the finder of fact may determine beyond a reasonable doubt that it was a defendant who was convicted of the prior felony, then a sufficient connection has been shown. *Pointer v. State*, 499 N.E.2d 1087, 1089 (Ind. 1986).

Hernandez v. State, 716 N.E.2d 948, 953 (Ind. 1999).

The State alleged that Rose was a habitual offender because he had previously been convicted of Class D felony auto theft, Class D felony sexual battery, and Class D felony theft. Indiana Code section 35-50-2-8(a) (2005) provides that the State “may seek to have a person sentenced as a habitual offender for any felony alleging ... that the person has accumulated two (2) prior unrelated felony convictions.” To prove that Rose was previously convicted of Class D felony auto theft, the State offered into evidence certified copies of the chronological case summary (“CCS”), the order waiving juvenile jurisdiction, the order finding probable cause, the charging information, the judgment of conviction, and two documents pertaining to Rose’s probation violation. To prove that Rose was previously convicted of Class D felony sexual battery and Class D felony theft, the State offered into evidence certified copies of the CCS, the judgment of conviction, the abstract of judgment, the charging information, the order finding probable cause, and the affidavit of probable cause.

These documents contained Rose’s name, address, and birth date which were consistent with the name, address, and date of birth provided to Trooper Michael Tomson by Rose in this case. Additionally, the documents establishing Rose’s conviction for auto theft established that Rose was accompanied in court by his mother, Carolyn Rose, and

the record here establishes that his mother, Carolyn Rose, was also involved in this case. Further, the documents establishing Rose's convictions for sexual battery and theft contain Rose's social security number which is consistent to the social security number provided to Trooper Tomson in this case. Because the documents carry consistent identifying information to match Rose to the prior convictions, we conclude that there was sufficient evidence from which a fact-finder could find beyond a reasonable doubt that the defendant was convicted of at least two separate unrelated felonies. *See Tyson*, 766 N.E.2d at 718.

II. Appropriateness of the Sentence

Rose also contends that the maximum twelve-year habitual offender sentence enhancement was inappropriate in light of his nature of the offense.⁴ Upon a determination that a person is a habitual offender, the length of the sentence enhancement imposed based upon such a finding is left to the trial court's sound discretion. *Merritt v. State*, 663 N.E.2d 1215, 1216 (Ind. Ct. App. 1996), *trans. denied*. Indiana Code section 35-50-2-8(h) provides that "the court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the advisory sentence for the underlying offense nor more than three (3) times the advisory sentence for the underlying offense." Here, Rose was convicted of a Class C felony. The advisory sentence for a Class C felony is four years. Ind. Code § 35-50-2-6 (2005). Therefore the maximum sentence enhancement for a habitual offender finding when the underlying crime is a

⁴ We note that Rose does not challenge the appropriateness of the sentence imposed for his underlying battery conviction.

Class C felony is twelve years. Any challenge to the length of the habitual offender enhancement must be made within the context of a claim that the sentence was inappropriate. *See Goodall v. State*, 809 N.E.2d 484, 486 (Ind. Ct. App. 2004) (stating that because the trial court does not have to set forth any aggravating or mitigating circumstances that explain the particular habitual offender enhancement that it chooses, the sentence may only be challenged to address the nature of the offense and the character of the offender).

Rose acknowledges that in light of his three prior felony convictions, one could easily determine that the maximum habitual offender enhancement was appropriate under the circumstances. However, he argues that his actions here are not among the “worst of the worst,” and therefore the maximum sentence enhancement was inappropriate. Pursuant to Indiana Appellate Rule 7(B), this court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Under this rule, the burden is on the defendant to persuade the appellate court that his sentence is inappropriate. *McMahon v. State*, 856 N.E.2d 743, 749 (Ind. Ct. App. 2006).

Here, the record establishes that Rose intervened in a domestic situation between his older sister and Walls. Rose argued with Walls on the phone, drove his motor bike one-and-one-half blocks to Walls’s home, again argued with Walls before striking him twice over the head with a metal pipe, knocking him unconscious. Further, after Walls had fallen to the ground, Rose continued to kick him until he heard the police sirens

approaching and then drove away on his motor bike, laughing. As a result of the attack, Walls continues to suffer from seizures, has permanent brain damage, and cannot be left alone, either by himself or with his children. Furthermore, the record establishes that Rose was twenty-seven years old at the time of the incident in question and had already amassed a substantial criminal record, including three Class D felony convictions, that dated back to when he was a juvenile. Therefore, in light of Rose's character and the nature of his offense, we conclude that the maximum habitual offender sentence enhancement was appropriate.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.